

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

CRL.A.No. 708 of 2002()

CC.554/1996 of JUDL. MAGISTRATE OF FIRST CLASS-III, KOZHIKODE
CRA.322/1999 of SESSIONS COURT, KOZHIKOE
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APPELLANT: COMPLAINANT/1ST RESPONDENT:

KRISHNANUNNI. P.K., S/O. K. MADHAVAN
NAIR, KEETHAT HOUSE, IRUVALLUR.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS: ACCUSED/APPELLANT & STATE:

1. RAGHAVAN. P., S/O. CHEKOTTY,
PINANGOTTUMMAL HOUSE, IRUVALLUR.
2. STATE OF KERALA REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM.

BY ADV. SRI.SUNNY MATHEW -R1
PUBLIC PROSECUTOR SRI. THOMAS JOHN AMBOOKKAN-R2

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 12/09/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.THANKAPPAN, J.

CRL. APPEAL NO. 708 OF 2002

Dated this the 12th day of September, 2007

JUDGMENT

The complainant in C.C. No.554 of 1996 on the file of the Judicial First Class Magistrate's Court - III, Kozhikode is the appellant.

2. The case of the appellant - complainant before the trial court was that the first respondent - accused borrowed from him an amount of Rs.20,000/- on 3.1.1995 agreeing to pay back the amount within four months. It was the further case of the complainant that the accused did not repay the amount, but issued Ext.P2 cheque towards discharge of the above liability which when presented to the bank for encashment was dishonoured for want of sufficient funds in the account of the accused. After complying with the statutory provisions, the complaint was filed against the accused alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881. To prove the case of the complainant, the complainant himself and another witness were examined as PWs.1 and 2 respectively and Exts.P1 to P5 were produced.

On the side of the defence, DW.1 was examined, but no documents were produced. After closing the evidence on the side of the appellant - complainant, first respondent - accused was questioned under Section 313 Cr.P.C. He denied the transaction alleged in the complaint and stated that he had borrowed an amount of Rs.10,000/- from the complainant and had issued a blank signed cheque as security. After considering the entire evidence, the trial court found the accused guilty under Section 138 of the Negotiable Instruments Act, 1881, convicted him thereunder and sentenced him to undergo simple imprisonment for three months. Against the above conviction and sentence, the accused filed Crl. Appeal No. 322 of 1998 before the Sessions Court, Kozhikode.

3. The lower appellate court found that the case set up by the accused - appellant therein was more probable and that the presumption available under Section 139 of the Negotiable Instruments Act was rebutted by the appellant. The lower appellate court, therefore, set aside the conviction and sentence ordered by the trial court and acquitted the accused - appellant therein, finding him not guilty.

4. Against the above judgment, this appeal is filed. After considering the arguments of the learned counsel appearing for the

appellant and perusing the records of the case, this Court is of the view that the lower appellate court was fully justified in coming to the conclusion that Ext.P2 cheque was issued by the accused as security for an amount of Rs.10,000/- which he received from the complainant. The above finding, therefore, requires no interference.

The Crl. Appeal is accordingly dismissed, confirming the judgment of the lower appellate court.

(K.THANKAPPAN, JUDGE)

sp/

K.THANKAPPAN, J.

CRL.A. NO.708/2002

JUDGMENT

12TH SEPTEMBER, 2007